

Senator SIMON. Thank you very, very much.

Senator Allen, I understand you have an 8 o'clock plane to catch.

Mr. ALLEN. Senator, the statement, "Delta is ready when you are," I don't believe that statement anymore. Also the judge is on the same plane.

Senator SIMON. You are all on the same plane?

Mr. ALLEN. We are all from Georgia, Senator.

Senator SIMON. One of the questions I have is—one of you mentioned Thurgood Marshall. When you looked at Thurgood Marshall's record, you knew where he was going. He was very, very clear. As I look at Judge Thomas' record and I look at Judge Thomas as a student at Holy Cross, it is—and I don't know that much about him at Yale Law School, but at Holy Cross he was that champion of the less fortunate, very, very vigorously.

Then I look at Judge Thomas' record in the Department of Education and with EEOC and I read his speeches—and I have read some 800 pages of his speeches—I see someone who comes out on almost the opposite side of Thurgood Marshall on just about everything. And I am trying to find which is the real Judge Thomas.

Mr. ALLEN. Senator, I think they jibe.

Senator SIMON. Pardon?

Mr. ALLEN. I think they do jibe. I think you have a young man—understand something. We would have to put Justice Marshall in a framework of 1967 and his life before then, but we have here a 43-year-old young man who has seen many of the policies that we were taught and believed to have "freed us and helped us and brought us out of our predicament," and I think here is a young man who is so concerned about the plight of the downtrodden that he saw many of the old ways not working. And I think he sat back and analyzed and said let's look at another way, let's try another way. So I see no real contradiction in the so-called two Clarence Thomases that others might see.

Senator SIMON. I think there are many people on this committee, including some who are going to vote for him, who find a real difference between his testimony and his record at this point.

Let me, if I may, Senator, because you used two names, toss this out—and then I would be interested in the answer to my first question from all of you.

You used Booker T. Washington and Frederick Douglass. They took two very, very different courses.

Mr. ALLEN. No, sir. W.E. DuBois and Marcus Garvey would be the same timeframe, Garvey and DuBois.

Senator SIMON. Yes. But if I may just take the two, Booker T. Washington lifted himself up by his bootstraps—had a very exciting personal story. But in a speech in Atlanta, as a matter of fact, he said he was the accommodator. He said about Frederick Douglass' demands for voting and these other things, let's lift ourselves up, let's not push for these things. And the white majority seized on Booker T. Washington's statements, and I think history has judged—those statements unfortunately did great damage to the cause that was an important cause. Frederick Douglass was the advocate, the strong promoter of the rights for the less fortunate.

As you look at Judge Thomas, is he more the Booker T. Washington or the Frederick Douglass?

Mr. ALLEN. Senator, he is an advocate of all those personalities. The speech that you made reference to historically was one where Booker T. said that, in all matters, we can be separate as fingers, but be as mutual as the hand, and he talked about us working together. I think he understood that everyone was not meant to study Plato and Socrates, and while there are some people who have the arts in mind and literature, as DuBois mentioned, as a talented tenth theory, he also mentioned that Garvey and Washington believed everyone was not equipped to be the scientist, the connoisseur of literature, and there was a place for that person, too, so I see Clarence as a conglomerate of all those philosophies to what can make things work for the downtrodden, because there was no exclusive way.

Senator SIMON. If I may, on the first question, direct it to all three of you—

Mr. BELL. If I might speak to the first question, I am testifying for Judge Thomas, because I think he is his own man. I did not come here to testify because I thought he was like Justice Thurgood Marshall. They are different. Each one as an American citizen has a right to stand on their own feet.

I do not know anything about Judge Thomas that would cause him to be tested by the standard of Thurgood Marshall. That has been a problem ever since he was nominated. People said, oh, we don't want him, because he is not the same as Thurgood Marshall. Well, that is not the test in this country. He has a right to be considered on his own merit, and on that merit I support him.

Senator SIMON. Judge Tanner.

Judge TANNER. I agree with Judge Bell that it is very difficult to compare Thurgood Marshall and Clarence Thomas. It is like comparing Joe Louis or Jack Dempsey with Mohammed Ali or Jackie Robinson with all the other black ballplayers that came along after him. It is a very difficult thing.

But I, Senator, happen to be at the time, I was on the board of directors of the NAACP, I happened to be there when Thurgood Marshall was the general counsel of the NAACP, I happened to be there when he was director of the ink fund. I do not think at any time did I ever agree with Thurgood Marshall, except on *Brown v. Board of Education*, so there are differences of opinion among black lawyers, among black judges, among black people in the United States, so I think it is unfair to say it, but you must remember, the Yale graduate, and I assume Yale Law School is one of those recognized law schools, even though people from other law schools might disagree, has a much better education than Thurgood Marshall and myself, because he comes along at a time in our history that everything has changed. It was not like it was before *Brown v. Board of Education*.

Senator SIMON. Ms. Wilson.

Ms. WILSON. I thought we had resolved the dichotomy between DuBois and Booker T. Washington. We need them both.

But I think what I really want to emphasize here is that the careers of these two men are quite different. Thurgood Marshall's entire life was devoted to the civil rights movement on the advocacy side and the framework of the NAACP. Clarence Thomas has chosen the harder route, to move into the system and work within

the system to make it change, and I think it is a much more difficult job. And I think the fact that he has reached this point is kind of a star in his crown, because it is not easy, when you are inside the system, to change it.

Senator SIMON. Senator Thurmond.

Senator THURMOND. Thank you very much, Mr. Chairman.

First, I want to welcome you all here today. I want to thank you for coming. This is a very distinguished panel and I doubt if we have any panel that will excel this one, a distinguished State senator of Georgia, the State of the nominee, a distinguished circuit judge, Griffin Bell, who made such a fine record as Attorney General, a distinguished retired Federal judge here, and an outstanding lady distinguished in her own right, Ms. Wilson. We are just delighted to have all of you here.

I just have two questions you can answer in one word. I will start with you, senator. Is it your opinion that Judge Thomas is highly qualified and possesses the necessary integrity, professional competence, and judicial temperament to be an Associate Justice of the U.S. Supreme Court?

Mr. ALLEN. Yes, Senator.

Senator THURMOND. Judge Bell?

Mr. BELL. Yes.

Senator THURMOND. Judge Tanner?

Judge TANNER. Senator Thurmond, I am not a retired judge, I am a senior U.S. district court judge on active duty. The answer to your question is amen.

Senator THURMOND. I correct myself in saying you were retired. I had understood you were retired. I thought you looked pretty young. [Laughter.]

Ms. Wilson.

Ms. WILSON. Senator Thurmond, yes, with great enthusiasm.

Senator THURMOND. The second question: Do you know of any reason why he should not be made a member of the Supreme Court, Senator Allen?

Mr. ALLEN. No, Senator.

Senator THURMOND. Judge Bell?

Mr. BELL. Absolutely no.

Senator THURMOND. Judge Tanner?

Judge TANNER. No, Senator.

Senator THURMOND. Ms. Wilson?

Ms. WILSON. Absolutely not.

Senator THURMOND. That is all. As far as I am concerned, you can go home, and if you rush, you might catch that plane.

Senator SIMON. We had better let Senator Specter get a question in here now. Senator Specter.

Senator SPECTER. Mr. Chairman, very briefly, because I know you have a plane to catch. I join my colleagues in thanking you for staying so late.

Judge Bell, would you classify Judge Thomas as well qualified for the Supreme Court, after having heard the ABA's recommendation of qualified?

Mr. BELL. I would classify him as well qualified, yes.

Senator SPECTER. Senator Allen, you are a member of the bar yourself, I understand?

Mr. ALLEN. Yes, sir.

Senator SPECTER. And you, of course, know Judge Thomas very well, you described your activities with him since boyhood. Do you have great confidence in his intellectual capability, based on your own personal knowledge?

Mr. ALLEN. Yes, Senator, and I wish that particular characteristic of his intellectual ability was stressed more throughout these hearings.

Senator SPECTER. Judge Tanner, I heard your comments on the radio coming over, and I thought I understood you to say that those who were opposed to Judge Thomas opposed him because he is African-American. Did I understand you correctly?

Judge TANNER. In listening to the hearings and reading the comments of the media, it appears to me that that is one of the issues, can a black man be trusted with the life, liberty, and property of the United States. I think all the questions that refer to natural law, implication or inference, are involved in that issue.

Senator SPECTER. Well, Judge Tanner, I hope no one opposes him on that basis, but how would you explain the opposition of the NAACP and some of the religious organizations which are African-American?

Judge TANNER. Well, look at the history of those organizations. I also, as Margaret Bush Wilson at one time, I was not the chairman, I was on the board of directors, I was a branch president, I helped form the National Conference of Black Lawyers. We, too, disagree, for different reasons. I was at one time a member of the Young Turks in the NAACP. We disagreed with Thurgood Marshall on the direction of the NAACP at that time. I am talking about the late 1950's and the early 1960's. We thought that the NAACP should put the resources, which were meager and perhaps still are, in the cities such as Chicago, New York, Detroit, and the large cities where the ghettos were being formed.

We also thought that then was the time to go back to the Supreme Court on *Brown v. Board of Education* and find out just what forthwith meant in the desegregation in the schools of America.

We ran into absolute bitter opposition on those issues, so we do disagree. We are not monolithic. We do not all agree. You see, Senator Specter, in my opinion and judgment, *Brown v. Board of Education*, for all intents and purposes, eradicated the legal impediments to people who had been descendants of slaves to get their fair share of America, but it did not tell us, *Brown v. Board of Education*, how to do that.

Senator SPECTER. Judge Tanner, I can understand how you would disagree with Justice Marshall and other African-Americans, but I do not yet understand why you would say that one African-American or a group like the NAACP would oppose Judge Thomas because he is black or an African-American.

Judge TANNER. Senator, I think history will show that it is not unusual or unknown for black people to oppose black people, just because they are black, for some reason. I am sure that there are many black lawyers and judges in the United States who are disappointed that President Bush did not call them to be the nominee to the Supreme Court of the United States.

But just because they are opposing him, and I firmly believe much of it comes, because you see that they are in these coalitions and some of them have called them special interest groups, as to how they think black America and women and other minorities should get their fair share of America. If you do not agree with them, then they think you are wrong.

Senator SPECTER. Ms. Wilson, do you agree with Judge Thomas on affirmative action?

Ms. WILSON. I think, Senator, you have to be clear, to let me sure I understand that you understand what Judge Thomas thinks about affirmative action. I have a view about it.

Senator SPECTER. Well, Judge Thomas has testified extensively about it and essentially he is opposed to affirmative action. That may be an oversimplification, but he is not in favor, for example, of having employment opportunities only of—on the basis of those who have actually been discriminated against, but not in favor of a group, to put them where they would have been, except for historic discrimination.

Have I stated that accurately, Senator Allen?

Mr. ALLEN. Sir, as we say in Georgia, somewhat muddy though.

Senator SPECTER. Somewhat what?

Mr. ALLEN. Somewhat muddy. I think I understand the judge's position to be that he has gone on record consistently in the area of quotas. Unfortunately, because in this whole process there has been no definition of terms, we have almost hitched up the phrase quota with affirmative action and they are not one and the same thing.

Senator SPECTER. Of course not. Senator Allen, you understand Judge Thomas' position on affirmative action?

Mr. ALLEN. The position as I have read, according to statements he has made, is that while he is opposed to quotas on the issue of affirmative action, I have understood his position to be that any favorite status for one that causes discrimination to another group he would, in fact, be opposed to, and that is probably the view of most Americans, particularly black Americans.

Senator SPECTER. Do you agree with him on that?

Mr. ALLEN. On that point, yes, sir.

Senator SPECTER. Thank you very much. I do not want to keep you any longer. You have a slim chance of making the 8 o'clock plane.

Senator THURMOND. I have called my car to come down and pick you all up and take you to the airport.

Mr. ALLEN. Thank you, Senator.

Senator THURMOND. I think you can make it, if you rush.

Senator SIMON. Thank you.

The committee stands adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 7:43 p.m., the committee recessed, to reconvene at 10 a.m., on Tuesday, September 17, 1991.]

[Additional documents submitted for the record are contained in Part 4, Appendix.]